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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

TUTOR-SALIBA CORPORATION, Plaintiff, Respondent and Cross-Appellant, v. ARCH INSURANCE COMPANY, Defendant, Appellant and Cross-Respondent.	B281764 (Los Angeles County Super. Ct. No. BC545323)

APPEAL from orders of the Superior Court of Los Angeles County, Elizabeth Allen White, Judge. Affirmed.

Nida & Romyn and David C. Romyn for Plaintiff, Respondent and Cross-Appellant.

Varela, Lee, Metz & Guarino and Andrew Van Ornum for Defendant, Appellant and Cross-Respondent.

This appeal concerns a contractor's recovery under a performance bond. The surety company, Arch Insurance Company (Arch), issued the bond to a subcontractor for its work on a major construction project managed by Tutor-Saliba Corporation (Tutor). When the subcontractor defaulted, Arch tendered a replacement subcontractor to Tutor. Tutor rejected the tender and completed the work itself. Tutor then sued Arch for the reasonable cost of that work.

After a bench trial, the trial court concluded that Arch's tender was inadequate, and awarded damages to Tutor. Arch now appeals and argues that the trial court erred in (1) concluding that Tutor was not required to provide proof of a valid contractor's license, (2) calculating the reasonable cost of completing the subcontractor's work, and (3) finding Arch liable for the cost of repairing drains on the site. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 2009, Tutor contracted with the State of California Department of Transportation (Caltrans) to build a replacement bridge in northern California and reroute the highway from the existing bridge to its replacement. Tutor subcontracted the excavation, grading, and drainage work to Sierra Equipment Rental Company (Sierra) for $6.5 million, which included $3.4 million for roadway excavation under Bid Item 58.

Bid Item 58 required Sierra to excavate material out of the side of a mountain, stockpile it, and then place the material in an embankment. Sierra's $3.4 million bid for this work was based on charging approximately $14 per cubic meter of material that needed to be excavated, stockpiled and embanked—there were an estimated 238,000 units.

Arch issued a performance bond to Sierra for the grading subcontract, guaranteeing Sierra's performance. The bond provided that, in the event of a Sierra default, either Arch "may promptly remedy the default . . . or . . . [¶] [Tutor] after reasonable notice to [Arch] may, or [Arch] upon demand of [Tutor] shall arrange for the performance of [Sierra's] obligation under the subcontract . . . ." If Tutor elected to arrange performance of the grading subcontract itself, Arch was liable to Tutor for the reasonable cost of completing the work less the remaining unpaid balance on the subcontract, which amount could not exceed the penal sum of the bond ($6.5 million).

In February 2012, after performing a portion of the grading subcontract—including excavating and stockpiling approximately 192,000 units—and getting paid $2.8 million out of the $3.4 million for Bid Item 58 work, Sierra defaulted. From that point on, Sierra was out of the picture. Only 46,629 units still needed to be *excavated* under Bid Item 58, but approximately 145,000 of the 192,000 units for which Tutor had paid Sierra were still in stockpiles and needed to be embanked.

On May 18, 2012, Tutor made a formal demand to Arch to complete Sierra's obligations under the grading subcontract. Arch obtained bids from two contractors, Stimpel-Wiebelhaus Associates (Stimpel) and Meyers Earthwork, Inc. (Meyers). Stimpel could not obtain a performance bond, and therefore, Arch tendered Meyers to Tutor as a replacement contractor.

In conjunction with the tender, Arch provided a proposed "Completion Agreement" signed by Meyers and Arch wherein Meyers agreed to complete Bid Item 58 work for more than $2

million at the per-unit cost of $44.[1] However, the Completion Agreement only provided for Meyers to excavate and embank the remaining 46,629 cubic meters without addressing the approximately 145,000 cubic meters remaining in stockpiles. The Completion Agreement was also contingent on Tutor's discharging Arch from further obligations under the performance bond, and included a release of all claims by Tutor against Arch. Tutor rejected the tender, and performed the work left over by Sierra under the grading subcontract.

In May 2014, Tutor filed suit against Arch to recover damages under the bond. Tutor argued it had been obligated by the bond terms to arrange performance of Sierra's obligations under the grading subcontract, and that Arch's tender was a defective offer of substitute performance. Tutor claimed more than $9.2 million in reasonable costs calculated on a "time and materials" basis instead of a per-unit price. Arch argued that Tutor's damages were excessive, and the reasonable cost of completing Sierra's work was the stated price of the unsigned Completion Agreement ($2 million).

After trial, Arch argued for the first time in its closing brief that Tutor had failed to prove it had a valid contractor's license. In response, Tutor argued that it had no obligation to prove it had a license because Arch had not identified licensure as a disputed issue during discovery. The court concluded Tutor was not required to provide proof of licensure.

The trial court entered judgment for Tutor, concluding that Arch was liable for Tutor's damages due to Arch's inadequate tender. Meyers' offer to complete Bid Item 58 work did not

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[1] Meyers' initial bid was $33 per unit; Meyers later raised this price to $44 per unit.

encompass the "full amount of stockpile which needed to be moved," because the Completion Agreement referenced "only 46,629 cubic meters instead of the entire stockpiles . . . ." Furthermore, the Completion Agreement "assigned financial risk that additional quantities were omitted from this amount to [Tutor], 'the contractor.' " The court concluded that "Arch's tender was conditional and thus not a complete offer of performance."

The court found that Arch was responsible for the "reasonable cost" of completing Sierra's work. Sierra's bid of $14 per unit of the 238,000 units in Bid Item 58 ($3.4 million total) was "unreasonably low." On the other hand, the court rejected Tutor's claim of $9.2 million in damages calculated on a time and materials basis. The trial court found that Stimpel's offer of approximately $37 per unit ($7.3 million total when multiplied by the remaining 192,000 units) was "the reasonable rate acknowledging that Sierra's bid was too low and that Meyers[']bid did not take into consideration the full amount of stockpile and roadway excavation to be moved." The court also awarded $312,124.44 to Tutor for "the cost to perform the remedial work required" to "edge" and "under-drains." The court adjusted the damages sum by $2.4 million to take into account the costs of a change order, and awarded Tutor $5.1 million in damages.[2]

Arch moved for a new trial challenging the court's conclusion that the 46,629 units under Bid Item 58 "was not all of the remaining scope of Bid Item 58 work," and its finding that

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[2] The trial court calculated damages as follows: $37.95/unit x 192,036.40 units = $7,287,781.38 + $312,124.44 (drain repair) = $7,599,905.82 – $2,484,382 (change order) = $5,115,523.82.

Arch was responsible for repairs to edge drains and underdrains. The court denied the motion, and Arch timely appealed.

DISCUSSION

Arch makes three primary arguments on appeal: (1) the trial court erred in holding that Tutor was not required to provide proof of a valid contractor's license; (2) the trial court erred in calculating the reasonable cost of completing Bid Item 58; and (3) Arch was not liable for the costs of repairing drains on the site. We conclude that none of these arguments has merit.[3]

1. *Tutor Was Not Required to Provide Proof of Its Contractor's License*

Arch contends that Tutor was required to provide evidence of a valid contractor's license at trial. Tutor argues the trial court was correct that Arch could not raise this issue for the first time after trial when its discovery responses indicated that Tutor's licensure was not disputed. We agree with Tutor.

Business and Professions Code section 7031 (section 7031) requires any person suing to recover compensation for work requiring a contractor's license to "alleg[e] that he or she was a duly licensed contractor at all times during the performance" of the work. (§ 7031, subd. (a).) If the defendant then "controvert[s]" the plaintiff's licensure, "proof of licensure . . . shall be made by production of a verified certificate of licensure . . . ." (*Id.*, subd. (d); see also *Buzgheia v. Leasco Sierra Grove* (1997) 60 Cal.App.4th 374, 384 [citing to § 7031, subd. (c)].)

Here, Tutor alleged in its complaint that it was licensed in California as a general contractor. Arch's answer contained a general denial of the complaint's allegations. Tutor then served a

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[3] Tutor filed a conditional cross-appeal. Since we affirm the judgment, we dismiss the cross-appeal as moot.

form interrogatory asking Arch to "identify each denial of a material allegation." Arch's responses did not identify Tutor's licensure as an issue in controversy; Arch did not supplement its responses at any time to controvert this issue. Arch first raised the issue of Tutor's licensure after trial in its closing brief, arguing that because Arch asserted a general denial to the complaint, "Tutor was required to produce a certified license history" and had failed to do so.

In response, Tutor pointed out that section 7031 only requires a plaintiff to provide evidence of a contractor's license when a defendant has controverted licensure. Tutor argued that Arch did not controvert licensure because Arch never raised this issue during the two years of pretrial litigation or 12 days of trial. In the alternative, Tutor sought to reopen evidence to offer proof that it had complied with section 7031.

The court ordered supplemental briefing. Arch opposed the motion to reopen evidence, and filed a copy of Tutor's licensure history showing that Tutor's license had been expired for 10 weeks at the end of 2015. The court concluded that Arch had not controverted licensure such that Tutor was required to provide proof of licensure: Arch's "denial as set forth in the answer requires that in response to [interrogatory] 15.1, that Arch supply facts upon which they claim that there was a period of non-licensure or that it be raised at trial, and it was not raised."[4]

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[4] We reject Arch's characterization of the trial court's ruling as a "discovery sanction" "preclud[ing] evidence based on discovery responses." Arch's contention that the trial court "exclu[ded] [] Tutor's license expiration" is not supported by the record: *Tutor* moved to reopen evidence to provide the court with an opportunity to evaluate evidence of its licensure, and *Arch* opposed the motion. At oral argument, Arch's counsel

Arch now argues the court erred in concluding Tutor was not required to prove licensure under section 7031. According to Arch, it adequately controverted the issue by alleging a general denial of Tutor's complaint's allegations. Arch cites to *Advantec Group, Inc. v. Edwin's Plumbing Co., Inc.* (2007) 153 Cal.App.4th 621 (*Advantec*) for the proposition that a general denial to a complaint alleging a proper contractor's license is sufficient to controvert an allegation of licensure under section 7031.

In *Advantec,* the cross-complainant attempted to testify at trial regarding his contractor's license, and the cross-defendant objected on the ground that section 7031 required that the cross-complainant prove his license through a verified certificate. (*Advantec*, *supra*, 153 Cal.App.4th at p. 625.) In response, the cross-complainant argued that section 7031 was never triggered because the cross-defendant had not controverted his license—the cross-defendant had not pled an affirmative defense on point. (*Id.* at p. 626.) The trial court sustained the objection, concluding that the cross-defendant was not required to plead an affirmative defense in order to controvert licensure. (*Ibid.*) The court then granted nonsuit based on the cross-complainant's failure to produce proof of licensure. (*Ibid.*) The Court of Appeal affirmed, concluding that the cross-defendant's general denial adequately controverted the allegation of licensure. (*Id.* at p. 629.)

The present case is not *Advantec*. Indeed, *Advantec* anticipates our very situation. In *Advantec*, the Court of Appeal

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represented that Arch did not oppose the motion to reopen evidence either orally or in writing. In fact, Arch's supplemental closing brief contained over three pages supporting Arch's argument that "Tutor's request to reopen evidence must be rejected."

pointed out that the cross-complainant could have "clarified by way of contention interrogatories whether [the cross-defendant] intended to contest the validity of its license" —here, Tutor did exactly that, and Arch's response informed Tutor that licensure was not a controverted issue. (*Advantec*, *supra*, 153 Cal.App.4th at p. 631.) Although the general denial of a complaint was sufficient to controvert licensure in *Advantec* where discovery did not address the issue and the defendant raised the issue during trial, a general denial is *not* sufficient where a defendant does *not* raise licensure when asked to identify issues in dispute during discovery, *and* also fails to raise the issue during trial.

The present case is analogous to *Womack v. Lovell* (2015) 237 Cal.App.4th 772 where the court found that a contractor was not required to produce evidence of licensure when the issue was only raised at the end of trial and the defendant had failed to identify this issue as controverted during pretrial discovery. (*Id.* at pp. 788-789.) We agree with the *Womack* court that "normal discovery and investigation" is an effective way of curtailing "abusive manipulation of the court." (*Id.* at p. 788.) Here, section 7031 did not empower Arch to omit mention of licensure as a disputed issue throughout pretrial discovery and 12 days of trial, and then ambush Tutor with the issue after the close of evidence.

2. *The Court Did Not Err in Calculating Reasonable Costs*

Arch makes several arguments under the heading that the trial court erred in determining the reasonable cost of completing Bid Item 58. According to Arch, the court erred in (1) interpreting the Completion Agreement as only addressing 46,629 units out of the 192,000 remaining units that needed to be excavated and/or embanked; (2) rejecting Meyers' $2 million bid as the reasonable cost of completing Bid Item 58; (3) admitting

exhibit 262 regarding Stimpel's bid of $37 per unit; and (4) finding that Sierra's initial bid of $14 per unit was too low. We disagree.

With respect to the Completion Agreement, we review the court's interpretation of the contract de novo. (See *Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1126 (*Wolf*); see also Civ. Code, § 1638 [the "language of a contract is to govern its interpretation"].)

As for damages, " 'an award of damages will not be disturbed if it is supported by substantial evidence.' " (*Rony v. Costa* (2012) 210 Cal.App.4th 746, 753.) When we review the record for substantial evidence, "we 'view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court.' " (*Donovan v. Poway Unified School Dist.* (2008) 167 Cal.App.4th 567, 582.) We review de novo the question of whether a plaintiff " 'is entitled to a particular measure of damages.' " (*Rony v. Costa,* at p. 753.)

a. *The Interpretation of the Completion Agreement*

Arch argues the trial court erred in concluding that "the Completion Agreement only required that the completion subcontractor excavate and embank 46,629 cubic meters under Bid Item 58 . . . ," Arch raises this argument under the heading that the court erred "in determining the reasonable cost to complete Bid Item 58 work." We understand Arch's argument about the purported misinterpretation of the Completion Agreement to go towards the weight the court gave to Meyers' $2 million bid under the contract: the court concluded that this offer only covered a portion of the remaining work, and found that the

reasonable cost of completing the work was higher. We agree with the trial court that the language of the contract unambiguously provides that Meyers had offered to excavate and embank only 46,629 units.

The Completion Agreement states that the scope of the work to be performed—the "Remaining Work"—is defined in exhibit B to the agreement. Exhibit B, titled "Remaining Work," provides that the "Quantity to Be Completed" for Bid Item 58 work is 46,629 cubic meters. Exhibit B does not reference the 145,000 cubic meters that had been left in stockpiles and still needed to be embanked. In its statement of decision, the trial court found that "the Completion Agreement only required that the completion subcontractor excavate and embank 46,629 cubic meters under Bid Item 58."

Arch first argues that the court's interpretation was wrong because Tutor stipulated that "46,629 cubic meters represented all remaining Bid Item 58 work on the contractual payment basis." This argument is not supported by the record—Arch only cites to Tutor's stipulation as to the per-unit method used by Caltrans to pay its contractors for roadway excavation.

Arch next argues that the Completion Agreement is reasonably read to require the embanking of the entire 192,000 remaining units. In support of this argument, Arch cites to paragraph 6 of the agreement which states that Meyers "shall furnish and pay for all labor, materials, services and equipment and shall do everything necessary to perform and satisfactorily complete the Remaining Work . . . ." In the context of the Completion Agreement's definition of "Remaining Work" under Bid Item 58 as only 46,629 cubic meters, paragraph 6 is also

reasonably read to require the completion of that limited portion of the project.[5]

Lastly, Arch cites to extrinsic evidence—such as its request for contractor bids—and parol evidence to show that it informed potential contractors that the project was for "all remaining work" in the grading subcontract, and Arch's intent was to arrange for completion of the entire subcontract. However, Arch does not argue that the Completion Agreement was ambiguous or uncertain such that extrinsic material should have been consulted about its interpretation. (See *Wolf*, *supra*, 162 Cal.App.4th at p. 1126 ["The court generally may not consider extrinsic evidence of any prior agreement or contemporaneous oral agreement to vary or contradict the clear and unambiguous terms of a written, integrated contract."].) We read the Completion Agreement to provide that Meyers agreed to perform work on only 46,629 cubic meters of the remaining Bid Item 58 work, and not the additional 145,000 cubic meters stockpiled.

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[5] Arch also argues that the Completion Agreement's provision that the "contractor will assume responsibility for omitted work" did not mean that Tutor was obligated to pay for the 145,000 units that still needed to be embanked. We need not reach this argument: the construction of that provision does not affect the way the Completion Agreement defined the scope of the work to be completed by the completion subcontractor. It is the scope of the work as set forth in the agreement which the court relied on to determine whether Meyers' offer to perform the work for $2 million was reasonable. Whether Tutor or Arch would be liable for omitted work is relevant only to whether the Completion Agreement was an inadequate tender, which is not an issue on appeal.

b. *Meyers' Offer to Complete Bid Item 58*

Arch argues that because the trial court found Meyers credible, it was required to find that "Meyers' price for Bid Item 58 is the reasonable cost for completing that work." The trial court summarized Meyers' testimony as follows: "Meyers understood he would have to move approximately 192,000 m^3 of dirt but that the entire pay item was only the unit price times the remaining pay item quantity (46,629 m3)." Although the court noted that "there was no attack on [Meyers'] credibility," it found that the bid Meyers made "did not take into consideration the full amount of stockpile and roadway excavation to be moved." The court thus concluded that Meyers' bid did not constitute a reasonable estimation of Tutor's costs for completing Bid Item 58.

Arch argues there is a contradiction between the court's finding that Meyers was credible and its finding that the Completion Agreement did not take into consideration the full 192,000 units of remaining work under Bid Item 58. We find this a non sequitur. Even if the court had found that Meyers' offer via the Completion Agreement took into consideration the full 192,000 units, the court was not required to accept that offer as equivalent to reasonable costs.

Our review is limited to determining whether there is substantial evidence in support of the court's finding of reasonable costs. The court considered the per-unit prices bid by Sierra, Meyers and Stimpel, and concluded that Stimpel's price multiplied by the number of units that needed to be embanked constituted the reasonable cost of performance. There was evidence that Stimpel, a subcontractor that had performed other work on the project, had offered to complete Bid Item 58 for $37 per unit for the 46,629 cubic meters, and that Stimpel would

expect to be paid the unit price for moving materials from stockpile to embankment as well. This was substantial evidence supporting the court's finding that $37 per unit multiplied by the entire amount of units to be embanked was the reasonable cost of completing the work.

c. *The Admission of Exhibit 262-1*

Arch argues the trial court erred in admitting exhibit 262-1 regarding Stimpel's bid of $37 per unit because the exhibit lacked foundation. Even if the exhibit was improperly admitted, the error is harmless because Stimpel's per-unit rate was established through other evidence. (See *Kennedy v. Eldridge* (2011) 201 Cal.App.4th 1197, 1203 [we will reverse the trial court's damages award only if prejudicial error is found].) Arch's own expert testified that Stimpel's bid for the completion of Bid Item 58 work was $37 per unit and no error is assigned to that evidence.

d. *Sierra's Per-Unit Price*

Lastly, Arch argues that the trial court's finding that Sierra's bid of $14 per unit was too low was not supported by substantial evidence because (1) there was no evidence Sierra's bid "was inadequate for Sierra's performance," and (2) two other contractors at the beginning of the project priced the work "in the same range," citing to Mercer Fraser's bid for $16 per cubic meter and J.F. Shea's bid for $19.50 per cubic meter. We disagree. There was undisputed evidence that other subcontractors bid at a higher rate per unit. That Sierra and two other contractors bid a lower price does not show there is no substantial evidence supporting the court's finding that reasonable costs should be measured at a higher per-unit price.

3. *The Court Did Not Err in Finding Arch Liable for Drain Repairs*

Arch argues the trial court erred in concluding that Arch was liable for damage to drains resulting from failed cement treated permeable base (CTPB) because (1) the CTPB work did not fall under the grading subcontract, and (2) Caltrans caused the damage. We disagree.

The CTPB installation covered and protected edge drains and underdrains from runoff. Sierra was responsible under the grading subcontract for installing edge drains and underdrains, and for protecting its work while the project was ongoing. Shortly after the CTPB was installed, Caltrans rejected the material and Tutor removed it. Tutor's project manager testified that Sierra's or its subcontractor's placement of the CTPB contributed to the CTPB's failure. He also testified that Sierra improperly installed some of the edge drains. Sierra did not take any measures to protect its drainage work from rain and runoff, and the drainage was damaged during subsequent storms.

The trial court awarded $312,124.44 in damages to Tutor for its costs fixing "edge drain and under-drain damage resulting from Caltrans['s] rejection of and T[utor]'s removal of the CTPB." The court rejected Arch's claim that the work did not fall under the grading subcontract, concluding that Tutor's costs "involved 'remedial' work that T[utor] performed to 'edge' and under-drains, and cut-slopes that Sierra installed incorrectly or failed to protect from winter storms . . . and to drainage pipes and drain material . . . . This work was within Sierra's bonded contract . . . ."

Arch cites to Sierra's paving subcontract with Tutor to show that the CTPB installation was not covered by the bonded

grading subcontract. This does not address the basis for the court's decision: that Sierra's failure to install drainage correctly and failure to protect its drains led to the damage. Although the removal of the defective CTPB installed under the *paving* subcontract exposed the drains to the elements, the court also found that Sierra's duties under the *grading* subcontract included installing and protecting the drains.

Arch next argued that "Tutor admitted the CTPB failure was Caltrans' fault," and if "Caltrans caused the damage, Sierra and Arch are not responsible for the . . . cost of edge drain repair." Arch cites to Tutor's letter to Caltrans stating that Caltrans caused the CTPB failure which, in turn, caused damage to the edge drains. Arch does not, however, grapple with the trial court's findings that the damage was *also* caused by Sierra's improper installation of drains, and Sierra's failure to take measures to protect its drainage work.

Arch essentially argues that there is some evidence that it was not responsible for the CTPB failure and that Caltrans's actions removing the CTPB caused the damage to the drains. However, our review is limited to examining whether substantial evidence supports the court's findings that Sierra's defective installation of the drains and failure to protect those drains *also* caused the damage. Arch does not dispute these findings, or the implied finding that Sierra's actions were a substantial factor in Tutor's damages.[6] (See *US Ecology, Inc. v. State of California*

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[6] Arch also argues that Tutor "admitted, by omission, that Sierra was not responsible when Tutor failed to put on any evidence of a notice to Sierra under the backcharge provisions in the Grading Contract." In support of this argument, Arch cites only to a contract provision stating that the "Contractor may, at

(2005) 129 Cal.App.4th 887, 909 ["The test for causation in a breach of contract . . . action is whether the breach was a substantial factor in causing the damages."].)

Lastly, Arch argues that Tutor's recovery from Caltrans for the defective CTPB should have been offset against its damages from Arch for the drain repairs. In support, Arch cites to a claim Tutor submitted to Caltrans for the costs of removing the CTPB ($176,427) and repairing the drains ($312,000), and Tutor's project manager's testimony that Tutor "received some payment from Caltrans as a result of" that claim. Arch also cites to the testimony of Tutor's vice-president of operations stating that Caltrans paid Tutor $125,000 to "resolve" the CTPB failure and "slope failure" but *not* the "edge drain damage." This evidence is not sufficient to establish that the $125,000 settlement from Caltrans for CTPB and slope failure, should have been offset from the $312,000 in damages for drain repairs. Arch has not shown that Tutor's settlement from Caltrans was for the cost of Tutor's drain repairs such that an offset was appropriate. (See *Conrad v. Ball Corp.* (1994) 24 Cal.App.4th 439, 444 [a "defendant seeking an offset against a money judgment has the burden of proving the offset"].)

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its option . . . after giving Subcontractor 2 working days' notice to cure the defects and Subcontractor's failure to completely cure," charge the costs of curing the defects to the subcontractor. Arch does not cite to any law establishing that a failure to give such notice equates a legal admission of lack of causation. This argument has not been developed, and we do not address it further. (See *Huntington Landmark Adult Community Assn. v. Ross* (1989) 213 Cal.App.3d 1012, 1021 [contentions supported by neither argument nor citation of authority are deemed to be without foundation and to have been abandoned].)

DISPOSITION

The judgment is affirmed. Tutor is awarded its costs on appeal.

RUBIN, J.*

WE CONCUR:

GRIMES, ACTING P. J.

STRATTON, J.

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* Presiding Justice of the Court of Appeal, Second Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.